

01
02
03
04
05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

07 TAMMY SUE VILLA,)
08 Plaintiff,) CASE NO. 3:15-CV-5373-DWC
09 v.)
10 CAROLYN W. COLVIN, Acting) ORDER RE: SOCIAL SECURITY
Commissioner of Social Security,) DISABILITY APPEAL
11 Defendant.)
12 _____)

13 Plaintiff Tammy Sue Villa proceeds through counsel in her appeal of a final decision
14 of the Commissioner of the Social Security Administration (Commissioner). The
15 Commissioner denied Plaintiff's application for Supplemental Security Income (SSI) after a
16 hearing before an Administrative Law Judge (ALJ).¹ Having considered the ALJ's decision,
17 the administrative record (AR), and all memoranda of record, the Court concludes the ALJ
18 provided insufficient legal reasons to reject the medical opinions of examining physician Dr.
19 Mark Heilbrunn and examining psychologist Dr. Kimberly Wheeler. Had the ALJ properly

20 _____
21 ¹ Plaintiff applied for SSI on July 30, 2007. AR 13. Plaintiff was found to be not disabled. *See* AR 13-23, 1-3.
22 Plaintiff appealed to the United States District Court for the Western District of Washington, which resulted in a
stipulated reversal and remand for further proceedings. *See* AR 477-80; *Villa v. Astrue*, 3:10-CV-5733-RBL-
KLS (W.D. Wash.). On remand, Plaintiff received a second hearing before ALJ Robert P. Kingsley, who found
Plaintiff not disabled. AR 396-417. The Appeals Council affirmed this decision (AR 371-74) and Plaintiff now
appeals ALJ Kingsley's decision finding Plaintiff not disabled.

01 considered these two medical opinions, the residual functional capacity (RFC) may have
02 included additional limitations. The ALJ's error is therefore not harmless, and this matter is
03 reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) to the Commissioner
04 for further proceedings.

05 **FACTS AND PROCEDURAL HISTORY**

06 Plaintiff was born on XXXX, 1961.² She has a tenth grade education. AR 679. She
07 has no past relevant work. AR 415.

08 After remand for further proceedings by the United States District Court in the
09 Western District of Washington (AR 478-79), on September 20, 2012, ALJ Robert P.
10 Kingsley held a video hearing from Tacoma, Washington, taking testimony from Plaintiff, a
11 vocational expert, and an impartial medical expert. AR 425-76. On January 10, 2013, the
12 ALJ issued a decision finding Plaintiff not disabled. AR 396-417. Plaintiff timely appealed.
13 The Appeals Council denied Plaintiff's request for review on April 15, 2015 (AR 371-77),
14 making the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this
15 final decision of the Commissioner to this Court.

16 **JURISDICTION**

17 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
18 405(g).

21 ² Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule
22 of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic
Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United
States.

DISCUSSION

The Commissioner follows a five-step sequential evaluation process for determining whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not engaged in substantial gainful activity since July 30, 2007, the application date. AR 398. At step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ found Plaintiff's right shoulder impingement, lumbar spine degenerative disc disease, and migraine headaches to be severe impairments. AR 398. Step three asks whether a claimant's impairments meet or equal a listed impairment. The ALJ found Plaintiff's impairments did not meet or equal the criteria of a listed impairment. AR 405.

If a claimant's impairments do not meet or equal a listing, the Commissioner must assess the RFC and determine at step four whether the claimant has demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of performing light work, lifting up to 20 pounds occasionally and 10 pounds frequently. AR 406. 20 C.F.R. § 416.967(b). She can occasionally stoop, kneel, crouch, crawl, reach bilaterally, and climb ramps and stairs. AR 406. She can frequently balance, but cannot climb ladders, ropes, or scaffolds. AR 406. She must avoid concentrated exposure to vibrations, airborne pollutants, and hazards. AR 406. Finally, she cannot perform jobs requiring manufacturing-style production pace. AR 406.

The ALJ concluded Plaintiff has no past relevant work for comparison to the RFC. AR 415. Therefore, the burden shifts to the Commissioner to demonstrate at step five that the claimant retains the capacity to make an adjustment to work that exists in significant numbers

01 in the national economy. Based on testimony by a vocational expert, the ALJ found Plaintiff
02 capable of performing jobs such as furniture rental consultant, usher, and counter clerk. AR
03 416. The ALJ found Plaintiff not disabled. AR 416.

04 This Court's review of the ALJ's decision is limited to whether the decision is in
05 accordance with the law and the findings supported by substantial evidence in the record as a
06 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
07 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
08 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
09 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
10 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
11 F.3d 947, 954 (9th Cir. 2002).

12 Plaintiff argues the ALJ erred by: 1) providing legally insufficient reasons to reject
13 examining physician Dr. Heilbrunn's opinion; 2) providing legally insufficient reasons to
14 reject examining psychologist Dr. Wheeler's opinion; 3) providing legally insufficient reasons
15 for discrediting Plaintiff's testimony; and 4) failing to support RFC, hypothetical questions,
16 and step five findings given the harmful errors. Dkt. 12, p. 1. Plaintiff requests remand for
17 award of benefits, or in the alternative, further proceedings.

18 I. Medical Opinion Evidence

19 Plaintiff alleges the ALJ failed to provide specific and legitimate reasons for
20 discounting the opinions of examining medical sources Mark Heilbrunn, M.D. and Kimberly
21 Wheeler, Ph.D. Dkt. 12, pp. 4-10.

22 The ALJ must provide "clear and convincing" reasons for rejecting the uncontradicted

01 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th
 02 Cir. 1996) (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or
 03 examining physician's opinion is contradicted, the opinion can be rejected "for specific and
 04 legitimate reasons that are supported by substantial evidence in the record." *Lester*, 81 F.3d at
 05 830-31 (citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1994); *Murray v. Heckler*,
 06 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ can accomplish this by "setting out a detailed
 07 and thorough summary of the facts and conflicting clinical evidence, stating his
 08 interpretations thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir.
 09 1998) (citing *Magallanes*, 881 F.2d at 751).

10 1. Mark Heilbrunn, M.D., examining physician

11 Plaintiff contends the ALJ erred by providing conclusory reasons for giving little
 12 weight to portions of examining physician Dr. Mark Heilbrunn's opinion. *See* Dkt. 12, p. 6.

13 "[A]n ALJ errs when he rejects a medical opinion or assigns it little weight while
 14 doing nothing more than ignoring it, asserting without explanation that another medical
 15 opinion is more persuasive, or criticizing it with boilerplate language that fails to offer a
 16 substantive basis for his conclusion." *Garrison v. Colvin*, 759 F.3d 995, 1012-13 (9th Cir.
 17 2014) (citing *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir.1996)). As the Ninth Circuit
 18 has stated:

19 To say that medical opinions are not supported by sufficient
 20 objective findings or are contrary to the preponderant
 21 conclusions mandated by the objective findings does not
 22 achieve the level of specificity our prior cases have required,
 even when the objective factors are listed seriatim. The ALJ
 must do more than offer his conclusions. He must set forth his
 own interpretations and explain why they, rather than the

01 doctors', are correct.

02 *Embrey*, 849 F.2d at 421-22 (internal footnote omitted).

03 Dr. Heilbrunn performed a physical evaluation in February 2008. AR 283-89. He
04 found Plaintiff has a mildly antalgic gait with increased weight on the left side. AR 286.
05 Plaintiff has thoracic kyphosis and right paraspinous muscle tenderness. AR 286. She has
06 bilateral hand tremors at rest, with volar tenderness, as well as tenderness over the dorsal
07 aspect of the right wrist and palmar aspect of her hand. AR 286. Her right grip strength was
08 reduced. AR 288.

09 Dr. Heilbrunn opined Plaintiff has "postural range of motion limitations of her lumbar
10 back and a manipulative range of motion limitation of the right shoulder[.]" AR 288. He
11 found Plaintiff can sit for twenty minutes uninterrupted with weight off her right hip for a
12 cumulative length of time of five out of eight hours with periods for postural repositioning.
13 AR 288. He also opined Plaintiff can stand for twenty to thirty uninterrupted minutes for a
14 cumulative time of six out of eight hours. AR 288. Additionally, Dr. Heilbrunn found
15 Plaintiff is unable to perform a full crouch, cannot kneel, and is unable to stoop to the floor
16 level. AR 288. Dr. Heilbrunn opined Plaintiff is able to lift and carry fifteen pounds with her
17 left hand and five pounds with her right; she has no reaching limitations in her left shoulder or
18 below her shoulder on the right side. AR 288-89.

19 The ALJ gave "significant weight to Dr. Heilbrunn's opinion that [Plaintiff] is capable
20 of walking and standing throughout the work day to the light exertional level[.]" AR 413.

21 However, the ALJ

22 gave little weight to Dr. Heilbrunn's opinion that [Plaintiff] is

01 capable of lifting at less than the light exertional level, or that
02 she requires more changes in posture than would be available
03 during normal breaks. The overall evidence of record is not
04 consistent with this degree of limitation. None of the claimant's
05 other examinations have indicated this degree of lifting
06 limitations.

07 AR 413.

08 The ALJ provided only vague, conclusory statements finding the overall evidence
09 does not support Dr. Heilbrunn's opinion regarding Plaintiff's lifting limitations and changes
10 in posture. The ALJ failed to identify any evidence in the record which is inconsistent with
11 these portions of Dr. Heilbrunn's opinion. Further, the ALJ has not cited to other medical
12 examinations in the record which show less restrictive lifting limitations. *See* AR 413.

13 Without more, the ALJ has failed to meet the level of specificity required to reject a
14 physician's opinion. Therefore, the ALJ's conclusory statements that the "overall evidence"
15 regarding Plaintiff's lifting restrictions and changes in posture are insufficient to reject Dr.
16 Heilbrunn's opinion. *See Embrey*, 849 F.2d at 421-22 (conclusory reasons do "not achieve the
17 level of specificity" required to justify an ALJ's rejection of an opinion); *McAllister v.*
18 *Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989) (an ALJ's rejection of a physician's opinion on
19 the ground that it was contrary to clinical findings in the record was "broad and vague, failing
20 to specify why the ALJ felt the treating physician's opinion was flawed").

21 The ALJ also failed to identify the weight given to Dr. Heilbrunn's opinion regarding
22 Plaintiff's inability to stoop, crouch, or kneel.³ *See* AR 413. While the ALJ "need not discuss
all evidence presented," he "must explain why significant probative evidence has been

³ The ALJ gave little weight to Dr. Heilbrunn's limitations related to Plaintiff's need to change postures, but did not identify the weight given to Dr. Heilbrunn's opinion regarding Plaintiff's ability to stoop, crouch, and kneel, which are considered postural limitations under the Social Security Regulations. *See* SSR 18-15.

01 rejected.” *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984)
02 (citation omitted) (emphasis in original). Plaintiff’s inability to stoop, crouch, and kneel is
03 related to her ability to perform work activities and is therefore significant, probative
04 evidence. *See Provencio v. Astrue*, 2012 WL 2344072, *9 (D. Ariz., June 20, 2012). The ALJ
05 did not provide any explanation as to the weight given to this evidence. As such, the Court
06 cannot determine if the ALJ properly considered and rejected this evidence or gave this
07 evidence great weight, but failed to incorporate the limitations into the RFC assessment.
08 Accordingly, the ALJ erred when he failed to explain the weight given to Dr. Heilbrunn’s
09 opinion regarding Plaintiff’s inability to stoop, crouch, or kneel.

10 “[H]armless error principles apply in the Social Security context.” *Molina v. Astrue*,
11 674 F.3d 1104, 1115 (9th Cir. 2012). An error is harmless, however, only if it is non-
12 prejudicial to the claimant or “inconsequential” to the ALJ’s “ultimate nondisability
13 determination.” *Stout v. Commissioner, Social Security Admin.*, 454 F.3d 1050, 1055 (9th Cir.
14 2006); *see Molina*, 674 F.3d at 1115. The determination as to whether an error is harmless
15 requires a “case-specific application of judgment” by the reviewing court, based on an
16 examination of the record made “‘without regard to errors’ that do not affect the parties’
17 ‘substantial rights.’” *Molina*, 674 F.3d at 1118-1119 (quoting *Shinseki v. Sanders*, 556 U.S.
18 396, 407 (2009) (quoting 28 U.S.C. § 2111)).

19 Had the ALJ properly considered Dr. Heilbrunn’s opinion as to Plaintiff’s lifting,
20 stooping, crouching, and kneeling limitations and her need for posture changes, he may have
21 included additional limitations in the RFC and in the hypothetical questions posed to the
22

01 vocational expert, Kim North. As the ultimate disability determination may have changed, the
02 ALJ's error is not harmless and requires reversal.

03 2. Kimberly Wheeler, Ph.D.

04 Dr. Kimberly Wheeler conducted a psychological assessment of Plaintiff in October
05 2011. AR 679-84. Dr. Wheeler diagnosed major depression and anxiety with a provisional
06 diagnosis of borderline personality disorder. AR 680. Dr. Wheeler observed Plaintiff's mood
07 disturbance, anxiety, paranoia, decreased energy, and irritability which would have marked
08 impact on work activities. AR 680. During mental status testing, Dr. Wheeler observed
09 derailed thought process, impaired delayed memory, and distractibility. AR 684. Her
10 concentration was effortful with little awareness of errors. AR 684. She could not perform
11 serial sevens, but could provide her social security number. AR 684. She had limited
12 judgment and problem-solving skills. AR 685.

13 Dr. Wheeler opined Plaintiff has moderate limitations in her ability to learn new tasks,
14 perform routine tasks without undue supervision, and be aware of hazards. AR 681. Dr.
15 Wheeler also opined Plaintiff is severely limited in her ability to perform effectively in a
16 workplace setting, even with limited public contact due to low trust and expectations that
17 others would hurt or betray her. AR 682. Also, Dr. Wheeler found Plaintiff is severely
18 limited in her ability to maintain appropriate behavior in a work setting because she was "full
19 of self-pity, excuses, misery." AR 682.

20 The ALJ gave little weight to Dr. Wheeler's evaluation because it was

21 [1] not consistent with the longitudinal evidence of record. The
22 claimant's treatment records show that, absent relatively recent
and significant psychosocial stressors, her symptoms have not

01 required specialized mental health care and improve with
02 medication. [2] Mental status examinations are more often than
03 not unremarkable. [3] Dr. Wheeler's opinion and GAF score are
04 not consistent with her objective examination findings. [4] She
05 did not have treatment history with the claimant and [5] based
06 her opinion primarily on the claimant's subjective complaints.
07 [6] She did not include a narrative statement of functional
08 capacity in the section titled "Medical Source Statement." The
09 GAF estimate appears to have taken into account psychosocial
10 stressors, such as the claimant's stressful situation with her son
11 and financial difficulties, which would be expected to cause
12 normal stress. [7] The review of records provides no
13 independent evaluation of the claimant since it is not supported
14 by an examination.

08 AR 403, 404 (internal citations omitted; numbering added).

09 First, the ALJ found Dr. Wheeler's opinion was not consistent with the longitudinal
10 record. AR 404. The ALJ determined Plaintiff's "treatment records show that, absent
11 relatively recent and significant psychosocial stressors, her symptoms have not required
12 specialized mental health care and improve with medication." AR 404. "[T]he fact that
13 claimant may be one of millions of people who did not seek treatment for a mental disorder
14 until late in the day is not a substantial basis on which to conclude that [a physician's]
15 assessment of claimant's condition is inaccurate." *Van Nguyen v. Chater*, 100 F.3d 1462, 1465
16 (9th Cir. 1996). "[I]t is common knowledge that depression is one of the most underreported
17 illnesses in the country because those afflicted often do not recognize that their condition
18 reflects a potentially serious mental illness." *Id.* (citation omitted); *see also Blankenship v.*
19 *Bowen*, 874 F.2d 1116, 1124 (6th Cir. 1989)). Thus, the ALJ may not discredit Dr. Wheeler's
20 opinion simply because the ALJ finds Plaintiff has insignificant mental health treatment
21 records.
22

01 Furthermore, the evidence indicates Plaintiff received mental health treatment. At the
02 hearing, the impartial medical expert testified about several different psychiatric visits and
03 evaluations. AR 433. The medical records from three visits with Dr. Jennifer Sexton
04 demonstrate consistent treatment-resistant anxiety and depression. AR 654-55, 657, 685. In
05 February 2012, Plaintiff had a psychiatric follow-up due to lack of symptom improvement.
06 AR 654. She reported a slight improvement in anxiety and depression, but still experienced
07 moderate to severe depression and moderate anxiety. AR 654. She was told to increase her
08 antidepressant medication but to watch for potential symptoms on higher doses “as bipolar
09 spectrum has not been completely ruled out.” AR 655. At her next appointment in April 2012,
10 Plaintiff again reported severe anxiety and depression despite increased medication. AR 657.
11 She “was tearful and more dysphoric and angry at her last visit.” AR 657. In June 2012 she
12 continued to report severe anxiety and depression. AR 685. Plaintiff was re-screened for
13 bipolar disorder because her mood disorder was found to be treatment resistant. AR 685. The
14 psychiatrist recommended tapering and avoiding antidepressants due to possibility of
15 increasing her agitation. AR 686. Given this evidence of treatment-resistant mood disorder,
16 the ALJ’s rejection of Dr. Wheeler’s opinion based on the “longitudinal evidence of record” is
17 unsupported by substantial evidence.

18 The ALJ next discredited Dr. Wheeler’s opinion because “[m]ental status
19 examinations were more often than not unremarkable.” AR 404. The ALJ cited to several
20 medical records to support his findings; however, the medical records relate to when Plaintiff
21 was seen for physical problems. AR 193, 310, 321, 744, 761. In one record, Plaintiff reports
22 an increase in her panic attacks. AR 253. The records cited by the ALJ do not show

01 unremarkable mental status examinations. Rather, the records show when Plaintiff reported to
02 the emergency room or a doctor for a physical problem the treatment notes reflect Plaintiff's
03 behavior was "normal." The ALJ has failed to cite evidence showing Plaintiff was seen for
04 mental examinations and her findings were "unremarkable." Therefore, this reason for
05 discrediting Dr. Wheeler is not legitimate or supported by substantial evidence.

06 Third, the ALJ gave little weight to Dr. Wheeler's opinion because Dr. Wheeler's
07 opinion and GAF score was not consistent with her objective findings. AR 404. However, the
08 ALJ failed to specify objective examination findings which contradicted Dr. Wheeler's
09 opinion. *See* AR 404. "[A]n ALJ errs when he rejects a medical opinion or assigns it little
10 weight while doing nothing more than ignoring it, asserting without explanation that another
11 medical opinion is more persuasive, or criticizing it with boilerplate language that fails to
12 offer a substantive basis for his conclusion." *Garrison*, 759 F.3d at 1012-13 (*citing Nguyen*,
13 100 F.3d at 1464). The ALJ's vague, conclusory statement that Dr. Wheeler's opinion is
14 inconsistent with the objective findings lacks the specificity required to discredit a doctor's
15 opinion. *See Embrey*, 849 F.2d at 421-22 (conclusory reasons do "not achieve the level of
16 specificity" required to justify an ALJ's rejection of an opinion).

17 Further, the mental status examination supported Dr. Wheeler's findings. For
18 example, during the examination, Plaintiff was easily distractible, unaware of mistakes, had
19 limited judgment, derailed thought processes, self-deprecation, impaired delayed memory,
20 and "effortful concentration." AR 684. She also displayed anxiety, paranoia, and mood
21 disturbance. AR 680. Accordingly, Dr. Wheeler's observations and the mental status exam
22 findings support her opinion. The ALJ's finding that Dr. Wheeler's opinion is not supported

01 by her objective examination findings is not specific and legitimate and supported by
02 substantial evidence.

03 The ALJ's fourth reason for discrediting Dr. Wheeler's opinion is because Dr.
04 Wheeler did not have a treating relationship with Plaintiff. AR 404. An examining doctor, by
05 definition, does not have a treating relationship with a claimant and usually only examines the
06 claimant one time. *See* 20 C.F.R. § 404.1527. "When considering an examining physician's
07 opinion . . . it is the quality, not the quantity of the examination that is important. Discrediting
08 an opinion because the examining doctor only saw claimant one time would effectively
09 discredit most, if not all, examining doctor opinions." *Yeakey v. Colvin*, 2014 WL 3767410,
10 *6, 2014 U.S. Dist. LEXIS 106081 (W.D. Wash. July 31, 2014). Accordingly, this is not a
11 specific and legitimate reason for rejecting the opinion.

12 The ALJ next stated Dr. Wheeler based her findings on Plaintiff's subjective
13 complaints. AR 404. "[An] ALJ may reject a treating physician's opinion if it is based 'to a
14 large extent' on a claimant's self-reports that have been properly discounted as incredible."
15 *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (*quoting Morgan v. Comm'r. Soc.*
16 *Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (*citing Fair v. Bowen*, 885 F.2d 597, 605 (9th
17 Cir. 1989)). This situation is distinguishable from one in which the doctor provides his own
18 observations in support of his assessments and opinions. *See Ryan v. Comm'r of Soc. Sec.*
19 *Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008) ("an ALJ does not provide clear and
20 convincing reasons for rejecting an examining physician's opinion by questioning the
21 credibility of the patient's complaints where the doctor does not discredit those complaints
22 and supports his ultimate opinion with his own observations"); *see also Edlund v. Massanari*,

253 F.3d 1152, 1159 (9th Cir. 2001). “[W]hen an opinion is not more heavily based on a patient’s self-reports than on clinical observations, there is no evidentiary basis for rejecting the opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) (*citing Ryan*, 528 F.3d at 1199-1200).

The Court notes

experienced clinicians attend to detail and subtlety in behavior, such as the affect accompanying thought or ideas, the significance of gesture or mannerism, and the unspoken message of conversation. The Mental Status Examination allows the organization, completion, and communication of these observations. . . . Like the physical examination, the Mental Status Examination is termed the objective portion of the patient evaluation.

Blessing v. Astrue, 2013 WL 316153, *7 (W.D. Wash. Jan. 28, 2013) (internal citations omitted) (*quoting* Paula T. Trzepacz and Robert W. Baker, *The Psychiatric Mental Status Examination*, 3-4 (Oxford University Press 1993)).

Dr. Wheeler performed an extensive and thorough mental status examination, listing a number of results. *See* AR 681-84. For example, the examination showed Plaintiff’s fund of knowledge was three out of four, she could remember three of three items immediately, but only one of three after a delay. AR 684. She could not complete serial sevens and could not spell world backward. AR 684. Plaintiff’s insight and impulse control were fair. AR 684. Dr. Wheeler also reported many of her own observations. *See* AR 680. She observed Plaintiff suffered from mood disturbances, anxiety, paranoia, decreased energy, and irritability. AR 680. Based on a review of the record, Dr. Wheeler’s opinion of Plaintiff’s limitations was not primarily based on Plaintiff’s subjective complaints.

01 Sixth, the ALJ gave little weight to Dr. Wheeler's opinion because the opinion did not
02 contain a statement of functional capacity. AR 404. The ALJ is correct in finding Dr. Wheeler
03 did not provide a medical source statement. *See* AR 682. However, the ALJ failed to explain
04 how the ALJ's failure to provide a statement of functional capacity undermines Dr. Wheeler's
05 opinion and findings. Therefore, this is not specific and legitimate reason to give little weight
06 to Dr. Wheeler's opinion.

07 Last, the ALJ discredits Dr. Wheeler's opinion because the "review of records
08 provides no independent evaluation of the claimant since it is not supported by an evaluation."
09 AR 404. The ALJ's reasoning is unclear. Dr. Wheeler performed an evaluation of Plaintiff
10 and based her opinion on Plaintiff's subjective complaints, her own observations, and the
11 objective findings from a mental status examination. Dr. Wheeler's review or lack of review
12 of medical records which did not contain examinations of Plaintiff does not detract from Dr.
13 Wheeler's findings. Therefore, this is not a specific and legitimate reason supported by
14 substantial evidence for giving little weight to Dr. Wheeler's opinion.

15 For the reasons discussed above, the ALJ failed to provide specific and legitimate
16 reasons supported by substantial evidence for giving little weight to Dr. Wheeler's opinion.
17 Therefore, the ALJ erred.

18 Had the ALJ properly considered Dr. Wheeler's opinion, he may have included
19 additional non-exertional limitations in the RFC and in the hypothetical questions posed to the
20 vocational expert. As the ultimate disability determination may have changed, the ALJ's error
21 is not harmless and requires reversal. *See Molina*, 674 F.3d at 1115.

22 The ALJ also gave little weight to Dr. Wheeler's opined GAF score. AR 404. The ALJ

01 found the GAF score opined by Dr. Wheeler appeared to take into account psychosocial
02 stressors. AR 404. A GAF score does not directly correlate to the Social Security regulations.
03 *See* 65 Fed.Reg. 50,746, 50,765-766; *Zerba v. Comm’r of Social Sec. Admin.*, 279 Fed. Appx.
04 438, 439 (9th Cir. 2008) (holding that an ALJ did not err in finding a claimant’s depression
05 not severe despite the consultative examiner’s GAF score of 45). “Given that GAF scores are
06 intended to account for psychosocial stressors, some of which are not relevant to eligibility for
07 disability benefits, and [Dr. Wheeler’s] opinion indentified particular psychosocial stressors
08 unrelated to disability, the ALJ’s interpretation of [Dr. Wheeler’s] opinion is not inaccurate.”
09 *Warner v. Colvin*, 2013 WL 6243833, *5 (W.D. Wash. Dec. 3, 2013). Accordingly, the ALJ’s
10 decision to give little weight to Dr. Wheeler’s assessment of Plaintiff’s GAF score is valid.

11 II. Plaintiff’s Credibility

12 Plaintiff testified about her debilitating migraines and pain. AR 437-69. She described
13 experiencing two or three migraines each month since 2007. AR 438-39. The migraines were
14 poorly controlled with rescue medication. AR 447. She discussed her severe back pain.
15 “Sometimes I walk with a limp when it’s really painful. If I don’t have any of those pills, the
16 naproxen and stuff, I’m really in a lot of pain and I have to lay with my legs up. It’s really
17 painful. I can’t bend over sometimes. I can’t do nothing.” AR 440. She told the ALJ she could
18 not walk much, needed to change positions frequently and spends significant time lying down.
19 AR 440-43. Plaintiff also described problems with her right leg, shoulder, wrist, lungs, and
20 depression. AR 445-6, 455-58, 461-2.

21 The ALJ found Plaintiff not fully credible because 1) the objective medical evidence is
22 not consistent with a finding of disability; 2) her physicians were unable to determine a reason

01 for her need for high dose opioid medications when her examinations were unremarkable; 3)
02 her physicians repeatedly noted she would benefit from increased physical activity; 4) she
03 failed to respond to requests for additional information regarding her impairments; and 5) her
04 activities of daily living are not consistent with her claims of disability. AR 414-15. Plaintiff
05 contends the ALJ failed to identify and explain which testimony is not credible, particularly
06 with respect to her pain, migraines and need to lie down during the day. Dkt. 12, pp. 14-16.

07 The Commissioner is responsible for resolving questions of credibility and conflicting
08 testimony. *Morgan*, 169 F.3d at 599. In evaluating a claimant's credibility, the ALJ may use
09 "ordinary techniques of credibility evaluation." *Molina v.*, 674 F.3d at 1112. This includes a
10 claimant's reputation for truthfulness, and inconsistencies in testimony, conduct, daily
11 activities, or work record. *Thomas*, 278 F.3d at 958-59. Unless there is affirmative evidence
12 showing that the claimant is malingering, the ALJ must provide clear and convincing reasons
13 for rejecting the evidence. *Lester*, 81 F.3d at 834.

14 Once a claimant produces medical evidence of an underlying impairment, the ALJ
15 may not discredit a claimant's testimony as to the severity of symptoms based solely on a lack
16 of objective medical evidence to corroborate fully the alleged severity of pain. *Bunnell v.*
17 *Sullivan*, 947 F.2d 341, 343, 346-47 (9th Cir. 1991) (*en banc*) (*citing Cotton*, 799 F.2d at
18 1407) While subjective symptom testimony cannot be rejected solely because it is not fully
19 corroborated by objective medical evidence, medical evidence is still a relevant factor in
20 determining severity of symptoms and their disabling effects. *Rollins v. Massanari*, 261 F.3d
21 853, 857 (9th Cir. 2001). An ALJ may discount a plaintiff's testimony when it contradicts
22 evidence in the medical record. *See Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995).

01 Plaintiff testified to extreme pain. AR 440. However, her physicians repeatedly
02 reported a lack of medical reasons to support the need for high dose narcotics. In February
03 2009, Plaintiff met with a new physician who expressed concerns about her narcotic use. AR
04 357. Dr. R. Samantha Ritchie concluded, "I am not seeing anything severe on her exam and
05 her nerve conduction studies have been essentially normal." AR 357. Dr. Ritchie wanted to
06 taper Plaintiff off the high dose narcotics. AR 357. After MRI and x-rays of Plaintiff's low
07 back, Dr. Ritchie again concluded Plaintiff's examination and results did not require
08 narcotics. AR 353. The doctor thought Plaintiff had been on narcotics for many years and
09 was having difficulty tapering. AR 353.

10 Similarly, in June 2009, Dr. Joseph Regimbal planned to begin tapering her opioids, as
11 he was "unable to determine any specific issues that should be required [sic] ongoing high-
12 dose opioids." AR 334. Her MRI showed only mild spinal stenosis. AR 322. He noted only
13 lumbar tenderness with normal range of motion, normal gait, station, coordination, and
14 balance, and no lumbar spasm. AR 334. Furthermore, the doctor was concerned about
15 Plaintiff's compliance with her pain contract. AR 410.

16 Plaintiff does not address this incongruity, choosing to focus her argument on her need
17 to lie down and migraine headaches. Dkt. 12, pp. 15-16, Dkt. 19, pp. 6-8. But, the overall
18 medical findings are inconsistent with Plaintiff's alleged level of pain and high dose narcotic
19 therapy. Plaintiff's physicians repeatedly noted no evidence of underlying medical
20 impairments requiring the level of opioids needed for pain control. The objective medical
21 evidence is normal or indicative of mild problems. AR 322, 353. Given the record, the ALJ
22

01 did not err in finding Plaintiff's allegations of disabling impairments are inconsistent with the
02 medical evidence. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007).

03 Additionally, the ALJ found Plaintiff failed to follow her physicians' advice regarding
04 benefit of increased physical activity. AR 415. Failure to assert a good reason for not seeking
05 or following a prescribed course of treatment or finding a proffered reason is not believable
06 "can cast doubt on the sincerity of the claimant's pain testimony." *Fair*, 885 F.2d at 603. Drs.
07 Ritchie and Regimbal both recommended physical therapy. AR 332, 334, 353. Dr. Regimbal
08 consistently told Plaintiff she should increase her activity level. AR 320, 329, 336. However,
09 according to Plaintiff's testimony, she spent most of her day lying down. AR 468. This
10 failure to follow a prescribed course of treatment without adequate explanation supports the
11 ALJ's finding that Plaintiff is not credible. *Id.*

12 The ALJ provided two well supported, clear, and convincing reasons for discounting
13 Plaintiff's testimony. Even assuming other reasons, like Plaintiff's activities of daily living,
14 were invalid, the ALJ's credibility determination is affirmed. *See Carmickle v. Comm'r of*
15 *Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (including erroneous reasons among
16 other valid reasons to discount a claimant's credibility does not negate the ALJ's
17 determination and is, at most, harmless error). On remand, the ALJ need only reconsider
18 Plaintiff's credibility as necessitated by further consideration of the medical opinion evidence
19 of Drs. Heilbrunn and Wheeler.

20
21 III. RFC Assessment and Step Five Findings

22 Plaintiff argues because the ALJ erred in his evaluation of the medical evidence, the

ALJ erred in his assessment of Plaintiff's RFC. *See* Dkt. 12, p. 17. The ALJ committed harmful error in his consideration of the opinions of Drs. Heilbrunn and Wheeler. *See* Section I, *supra*. As a result of the ALJ's error, the RFC provided by the ALJ is incomplete. Accordingly, on remand, the ALJ must reassess Plaintiff's RFC.

Plaintiff also alleges the ALJ erred in his step five analysis because he based the hypothetical questions on an incomplete RFC. *See* Dkt. 12, p. 17. Because the ALJ's RFC assessment was incomplete, the question posed to the vocational expert was also incomplete. Accordingly, on remand the ALJ must apply the new RFC when determining if there are other jobs in the national economy Plaintiff can perform at step five.

IV. Remand for Further Proceedings

The ALJ failed to provide legally sufficient reasons to reject the opinions provided by Drs. Heilbrunn and Wheeler. These errors were harmful and require reversal. Plaintiff contends that reversal for award of benefits is the proper remedy. Dkt. 12, p. 17, Dkt. 19, p. 9.

The Court may remand for an award of benefits where:

the record has been fully developed and further administrative proceedings would serve no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence, whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence were credited as true, the ALJ would be required to find the claimant disabled on remand.

Garrison, 759 F.3d at 1020. Except in rare circumstances, remand for additional investigation or explanation is the proper remedy. *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014). "Administrative proceedings are generally useful where the record 'has

01 [not] been fully developed,' there is a need to resolve conflicts and ambiguities, or the
02 'presentation of further evidence ... may well prove enlightening' in light of the passage of
03 time." *Id.* at 1101 (internal citations omitted). Here, issues must be resolved concerning
04 Plaintiff's functional capabilities and her ability to perform other jobs existing in significant
05 numbers in the national economy. Therefore, remand for further administrative proceedings is
06 appropriate.

07 **CONCLUSION**

08 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
09 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is REVERSED
10 and this matter is REMANDED for further administrative proceedings. On remand, the ALJ
11 must reevaluate the medical opinions provided by Drs. Heilbrunn and Wheeler, develop the
12 record as necessary, determine a new RFC, and proceed with the remaining steps of the
13 sequential evaluation process.

14 DATED this 18th day of December, 2015.

15
16 

17 David W. Christel
18 United States Magistrate Judge
19
20
21
22